

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DWIGHT RUSSELL, *et al.*,
Plaintiffs,

v.

Civil Action No. 4:19-cv-226

HARRIS COUNTY, TEXAS, *et*
al.,
Defendants.

Motion for Leave to File *Amicus Curiae* Brief

Senator Paul Bettencourt & State Representatives Sam Harless, Dan Huberty, Briscoe Cain, Dennis Paul, Tom Oliverson, James Murphy, Dwayne Bohac, and Valoree Swanson respectfully moves for leave to file an *amicus curiae* brief in opposition to Plaintiffs' Motion and Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction [Dkt. 32] and Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction Regarding Executive Order GA 13 [Dkt. 53] and in support thereof would respectfully show the court the following:

Senator Paul Bettencourt represents District 7 in the Texas State Senate. District 7 includes approximately 954,933 Texas residents of Harris County,

Texas.¹ These residents live in the cities of Houston, Bunker Hill Village, Hedwig Village, Hunters Creek Village, Jersey Village, Piney Point Village, Tomball, and unincorporated areas of Harris County.² State Representative Sam Harless has 190,000 constituents in Harris County, Texas, Dan Huberty has 190,000 constituents in Harris County, Briscoe Cain has 188,000 constituents in Harris County, Dennis a Paul has 190,900 constituents in Harris County, Tom Oliverson has 217,000 constituents in Harris County, James Murphy has 191,000 constituents in Harris County, Dwayne Bohac has 187,000 constituents in Harris County, Valoree Swanson has 212,803 constituents in Harris County.

Senator Bettencourt et al believe that their brief may be of assistance to the Court because it outlines the constituent concerns of the representative of over a third of Harris County residents.³

Accordingly, Senator Bettencourt and Representatives Harless, Huberty, Cain, Paul, Oliverson, Murphy, Bohac and Swanson respectfully

¹ See *Analysis by Texas Legislative Council, Research Division*, 2014-2018 American Community Survey (ACS) 5-Year Summary File (<https://wrm.capitol.texas.gov/fyiwebdocs/PDF/senate/dist7/profile.pdf>).

² See *Cities and Census Designated Places (CDPs) by District*, Texas Legislative Council (<https://wrm.capitol.texas.gov/fyiwebdocs/PDF/senate/dist7/r6.pdf>).

³ According to the 2010 census, the population of Harris County was 4,092,459 and the population of District 7 was 954,933.

requests that the Court grant their motion for leave to file the accompanying brief and consider his arguments during its deliberations.

Respectfully submitted,

/s/ Gary M. Polland

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Paul, Tom Oliverson, James Murphy,

Dwayne Bohac, Valoree Swanson

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Motion for Leave to File *Amicus Curiae* Brief has been sent to all interested parties via the CM/ECF filing system on April 7, 2020.

/s/ Gary M. Polland

Gary M. Polland

ATTACHMENT

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Amicus Curiae Brief by Senator Paul Bettencourt, State Representatives Sam Harless, Dan Huberty, Briscoe Cain, Dennis Paul, Tom Oliverson, James Murphy, Dwayne Bohac, Valoree Swanson

Senator Paul Bettencourt et al objects to the wholesale release of individuals accused of felony offenses from the Harris County Jail. In the midst of statewide and countywide stay at home orders¹ in response to coronavirus disease 2019 (COVID-19), residents of Senate District 7, and State Representative Districts 126 Harless, 127 Huberty, 128 Cain, 129 Paul, 130 Oliverson, 133 Murphy, 138 Bohac and 150 Swanson are now burdened with the concerns of mass release of individuals accused of felony offenses currently housed in the Harris County Jail. Senator Bettencourt et al join with

¹ Governor Greg Abbott's Executive Order Implementing Essential Services and Activities Protocols (<https://gov.texas.gov/news/post/governor-abbott-issues-executive-order-implements-statewide-essential-services-and-activities-protocols>); Harris County Judge Lina Hidalgo's Stay Home, Work Safe Order *as amended* (<https://www.readyharris.org/Stay-Home>).

the State of Texas, Governor Greg Abbott, and Attorney General Ken Paxton and respectfully requests this Court to deny plaintiffs' requests for injunctive relief and dismiss plaintiffs' lawsuit in its entirety for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1).

The constituents of the above State legislators include law enforcement officers, veterans, medical workers, small business owners, parents now educating their children at home, and crime victims, who are navigating the difficult circumstances surrounding this COVID-19 pandemic including financial strain. Houston Police Chief Art Acevedo declared that the release contemplated by plaintiffs "would put additional strain on already limited law enforcement resources and divert them from aiding with the pandemic control efforts." *See* Declaration of Houston Chief of Police Art Acevedo [Dkt. 54-2].

Even though Harris County District Court judges have agreed to release certain arrestees, this is insufficient for plaintiffs and Harris County.² Today, Sheriff Gonzalez "urges the Court to order, as an independent exercise of its constitutional powers, the release of any non-violent detainees who have no prior conviction of a serious violent crime or no prior conviction of any violent

² *See* First Amended General Order Bond for Certain Offenses (<https://www.justex.net/JustexDocuments/0/News%20Items/News%202020/First%20Amended%20General%20Order%20Bond%202APR2020.pdf>).

crime in the past 10 years and who do not pose a risk to public safety.” *See* Statement of Sheriff Ed Gonzalez [Dkt. 65]. The State Intervenors were forced to intervene here to represent the interests of my constituents because they were unrepresented by Harris County.

The above State legislators from Harris County, Texas are against the dangerous release of accused felony offenders from the Harris County Jail without any consideration of law enforcement officers and crime victims, as this will assuredly continue a crime wave in Harris County. This Court should deny plaintiffs’ requests for injunctive relief and dismiss this lawsuit in its entirety for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1).

Respectfully submitted,

/s/ Gary M. Polland

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Dwayne Bohac, Valoree Swanson,

Certificate of Service

I hereby certify that a true and correct copy of the foregoing *Amicus Curiae* Brief by Senator Paul Bettencourt et al has been sent to all interested parties via the CM/ECF filing system on April 7, 2020.

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